

THE NEW SLAVE TRADE

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Not even the powerful presence of Yuri Orlov and Natan Shcharansky, torchbearers for the unquenchable human spirit, could brighten what inevitably became a somber birthday ceremony.

The January 23, 1987 hearing by the Commission of Inquiry into Soviet compliance with international human rights agreements was not intended to be a ceremony of any sort. But just as snow inevitably silences Siberia, the hearing was hushed as Orlov and Shcharansky invoked the life, death, and now just the memory of Anatoly Marchenko.

Orlov is a Soviet physicist who had been an imprisoned Soviet dissident. After spending seven years in prison and internal exile, he was exiled to the West in October 1986. Shcharansky was jailed for seven years for opposing Soviet human rights abuses. Both lived to tell the West, and specifically this commission, about their experiences.

Marchenko didn't.

January 23, 1987 would have been Marchenko's 49th birthday. But in a Soviet prison last December, Marchenko died while on a hunger strike. The crime that merited his imprisonment was seeking basic human rights for his fellow citizens. He died opposing Soviet oppression, the victim not just of a hunger strike but of the entire Soviet system.

Marchenko's struggle came to life at the commission hearing. Orlov said Marchenko's death sparked new attention by the Soviet leadership to human rights. Shcharansky noted that Marchenko is a typical example of what happens to those who speak out for human rights in the Soviet Union. Orlov and Shcharansky brought a very clear message to the commission and the world that day. They stressed that an enormous gap exists between Soviet claims about human rights improvements and the reality of their performance. Shcharansky told of his deep concern about "the desire of the West to want to be deceived." He stressed that the new Gorbachev policy of "glasnost" — openness — has resulted in precious little change in human rights in the Soviet Union, despite the well-timed release of a few prisoners.

This warning, which has been sounded so often before, carried unusual force. Orlov and Shcharansky, among the few Soviet dissidents released amid great fanfare, are finally free and able to speak out. In a Soviet grave, Marchenko, one of millions of the Soviet oppressed, has been silenced.

How can the West effectively champion the cause so nobly expressed in the lives of Marchenko, Sakharov, Solzhenitsyn, and countless others? It seems as if the West is limited to conducting hearings, convening commissions of inquiry, and issuing press releases in its battle against Soviet oppression. Such action can win freedom for some highly visible dissidents; the Soviets respond when specific abuses are brought to light and they must face the full power of world opinion. Of course, such response is not reform. It is only a lull in business as usual.

The West can do more to encourage — provoke may be a better term — the Soviets to adopt respect for internationally recognized human rights as routine policy. The United States has in its legal arsenal the weapon that could lead to lasting human rights reform. Regrettably, and to its dishonor, the United States refuses to use it.

Is this weapon the MX missile? The neutron bomb? Star Wars? It is none of the above. The single best weapon is to enforce one simple U.S. law: Section 307 of the Tariff Act of 1930. In elegant simplicity, this law states:

All goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor . . . shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited.

If the United States were to ban Soviet forced labor-made goods, it might provide the needed spark to accomplish real and lasting human rights reform.

Marchenko would have applauded such action. He and millions like him lived and have died in Soviet forced labor camps under conditions best described as brutal.

Forced labor in the Soviet Union has long been a cornerstone of Marxist-Leninist ideology. As early as December 1917, V.I. Lenin suggested that punishments might include "confiscation of all property . . . confinement in prison, dispatch to the front and forced labor for all who disobey the law."

Today, forced labor is central to Soviet economic policy. Vladimir Bukovsky spent eleven and a half years in Soviet forced labor camps. He was exiled in 1976 and is now a researcher in the Psychology Department at Stanford University. In testimony before the U.S. Senate Finance Committee in 1985, Bukovsky outlined the following reasons for the use of Soviet forced labor:

First, the Soviet economy is what is called an extensive economy with a chronic shortage of labor. Second, many branches of the Soviet economy have particular difficulty to attract the free labor because of its geographic location, harmful effects on the laborer's health, or low payment. Third, and probably more important for our discussion, only the cheap labor can make some products able

to stand the competition in the world's market because of their low prices. Fourth, . . . the productivity of prisoners can be arbitrarily regulated by assorted punishments, or by a threat of death of starvation.

Naturally, the increased demand for these products on the world's markets will automatically lead to [an] increase in the use of prisoners' labor, and therefore, to an increase in prison camps population.

The extent of forced labor in the Soviet Union was documented by the U.S. State Department in 1983. It said 4 million people are imprisoned in more than 1,100 Soviet forced labor camps. These prisoners, of which more than 10,000 have been imprisoned simply for political reasons, toil under barbaric conditions. The State Department's *Country Reports on Human Rights Practices for 1985* found that prisoners experience beatings, inadequate food, clothing, and shelter, heavy manual labor, unsatisfactory medical care, isolation, extended interrogation and threats against their families.

Those who suffer harsh treatment are not necessarily hardened criminals. In the Soviet Union, citizens are arrested for disagreeing with government policy, for demonstrating for peace, or for meeting in unauthorized groups. Those who practice and teach religion are frequently arrested. However, these individuals are not charged with practicing religion. Instead, they are arrested on trumped-up charges. Roald Zelichenok, a Leningrad scientist and part-time Hebrew teacher, was arrested for "anti-Soviet activity." Yuli Edelshtein, a Hebrew and English teacher, was arrested for supposedly trafficking in drugs. The result is the same — they are sent to prisons and forced labor camps where conditions are brutal.

Take, for example, the words Yuli Edelshtein's wife, Tatyana, will never forget. She was told that Camp Administrator Major Anikeev said he would "kick the religious intoxication out of Edelshtein's head."

After four months at Vidrino, Yuli was covered with bruises and wounds, as a result of construction accidents and other "incidents." Later, one of his fingers was crushed by a heavy log. In January 1986, under circumstances which are still unclear, he suffered multiple fractures of his pelvis, hipbone and legs, and his urethra was ruptured. He was sent to a prison hospital where, according to reports received by human rights organizations here in the United States, his treatment was rudimentary at best. Since that time, even though his health remains precarious, he has been told that he may be sent to a Far Eastern labor camp, a terrible journey even for a healthy man.

Yuli Edelshtein's situation is not unique. Anatoly Marchenko, mentioned earlier, suffered similar conditions in forced labor camps. After his initial arrest for participating in a fight among workers, he was jailed in 1958. In October 1960, he was sentenced to six years in camp for "treason" for escaping

during his first imprisonment and trying to flee across the Soviet border into Iran.

Marchenko was forced to work at hard labor because of the "political" nature of his crime. While in prison, he became an advocate for human rights and received additional charges of "anti-Soviet slander" for letters he wrote defending Czechoslovakia's attempts to gain freedom in 1968. Already on "strict regime," under which prisoners are denied certain privileges and are forced to perform more difficult work with a more restricted diet, Marchenko repeatedly found himself in solitary confinement under even more brutal conditions for refusing to collaborate with prison officials.

Marchenko's health suffered greatly due to the restrictive diet and harsh working environment. By the time of his release he was nearly deaf because he was denied even moderate treatment for recurrent ear infections. Marchenko was jailed again in 1981 for "anti-Soviet agitation and propaganda" due to his writings on conditions in Soviet prisons, prison hospitals, and forced labor camps, including his powerful and moving book, *My Testimony*. When he died on December 8, 1986, he had spent more than half of his life in detention for his "political" crimes.

The cases of Anatoly Marchenko and Yuli Edelshtein are not isolated incidents. Millions are jailed in Soviet forced labor camps today, and the goods they produce are exported from the Soviet Union to Western markets. Cronid Lubarsky, a Soviet astronomer and former forced labor prisoner who is now editor of *USSR News Brief* and an expert on Soviet human rights, states, "In one degree or another, the hand of a prisoner has touched everything that the West receives from the Soviet Union." Therefore, it is paramount that we not increase Soviet use of forced labor by buying products made in forced labor camps; instead, we must apply the forced labor provision of the 1930 Tariff Act.

When Congress became aware of the use of forced labor, suggestions were made that this statutory remedy should be invoked against Soviet products. This law had been enforced previously against other countries. In fact, between 1950 and 1960, Soviet crabmeat was banned from import into the United States because evidence showed it was produced by forced labor.

In 1983, the Senate adopted S. Res. 449, requesting a report on Soviet forced labor from the State Department. The preliminary report stated, "[t]here is clear evidence the Soviet Union is using forced labor on a massive scale." And the final *Report to the Congress on Forced Labor in the USSR* found that forced labor is used "to produce large amounts of primary and manufactured goods for both domestic and Western export markets."

In May 1983, the CIA, at the request of Congress, compiled a list of over three dozen Soviet industries "which utilize forced labor and produce goods for export." That list included chemicals, petroleum products, gold, uranium, aluminum, electronics, auto parts, clothing, tea, wood products, and glass-

ware. Based on this evidence, U.S. Customs Commissioner William von Raab reported his finding on September 28, 1983, stating that "because such merchandise is being, or is likely to be, imported into the United States in violation of the Tariff Act of 1930 and the Customs Regulations, the release from Customs custody for importation of any of the specified articles is being withheld . . ."

The current Customs regulations state that if the Commissioner of Customs finds that information available to him reasonably indicates that suspect products are being imported, he will promptly advise all district directors who will, in turn, withhold release of those products. Notifying the district directors and holding the merchandise are nondiscretionary duties under federal regulation. After this first step is taken, the Customs Commissioner, with the approval of the Secretary of the Treasury, publishes the finding in the *Federal Register*.

This normal administrative process has been carried out with respect to other countries and other products in the past with no apparent difficulty. Through some quirk, this process was somehow and for some unknown reason short-circuited when Congress requested enforcement of the ban against Soviet forced labor-made goods. The matter suddenly required the attention of top U.S. officials in multiple government agencies. Instead of issuing his finding to his district directors as he is required to do, the Customs Commissioner sent his finding to Treasury Department officials for additional approval. That approval was denied.

The Department's refusal to enforce the law led to a series of Congressional actions to ban Soviet forced labor-made products. These included the following:

- The Senate unanimously passed a Sense of the Senate amendment urging the Secretary of the Treasury to use existing law to prevent the importation of forced labor products from the Soviet Union.
- The House of Representatives passed a resolution condemning the use of forced labor in the Soviet Union by a vote of 402-0.
- Forty-five Senators signed a letter to the Treasury Secretary requesting enforcement of the law.
- Eighty-four Members of Congress signed a letter to the Commissioner of Customs asking that the law be enforced.
- Hearings were held in both the House and the Senate by a number of congressional committees on the intentions of the Department of the Treasury to abide by the law. Witnesses included former prisoners, the Washington Legal Foundation, and the AFL-CIO.
- A lawsuit was filed by more than 30 members of the House and Senate, the Washington Legal Foundation, the International Long-

shoremen's Association, and others asking federal courts to direct the Treasury Department to enforce the law.

- A number of congressional resolutions were introduced urging immediate enforcement of the ban.

Instead of banning the 36 categories of products from entering the United States, an administration interagency review panel compiled much stricter evidentiary standards under which products would be prohibited in the future.

Even under the much stricter standards, Customs Commissioner von Raab still felt he had reasonable evidence to indicate that certain goods made with Soviet forced labor were or were likely to be imported into the United States. On December 2, 1983, he submitted a new finding that listed five products and recommended that they should be banned. These included gold ores, agricultural machinery, tractor generators, refined oil products, and tea.

Two months later, on January 28, 1985, then Treasury Secretary Donald Regan sent a memo to Commissioner von Raab informing him of the following:

Based upon the evidence currently available to me, I have decided that there presently is no basis upon which to prohibit or withhold from importation into the United States any goods produced within the Soviet Union.

Secretary Regan based his conclusion on two documents. First, he referred to a May 16, 1984 letter from CIA Director William Casey in which Casey stated: "Despite continued monitoring, we are unable to obtain sufficient facts to make a solid case that any particular good we receive from the USSR is produced by convict, forced or indentured labor." Second, Mr. Regan cited the findings of a "new" report written by the International Trade Commission indicating no additional information on Soviet forced labor practices was available.

But neither of these documents provides any practical reason for non-enforcement. The Administration does not need to determine which *specific* products being imported into the United States are made with forced labor. Current federal regulation states that if *any class* of merchandise is suspected of being made with forced labor, the district director *shall* inform the Customs Commissioner and if the Commissioner finds "at any time that information available reasonably but not conclusively indicated that merchandise within the purview of section 307 is being, or is likely to be imported, he will . . . withhold release of any such merchandise" until a final determination is made.

The second document, the ITC report, is merely an attempt by the Treasury Department to sidetrack the issue of forced labor. It states at the very beginning that the report was merely a compilation of already available evidence from Customs, the CIA, and the Commerce and State Departments. Further,

it states, "[t]he Commission did not have the resources to verify independently information provided by other government agencies." If the ITC had been able to look at new data and seek additional information from other sources, the report might well have come to a very different conclusion.

Treasury's disregard of federal regulations and the intent of the forced labor provision triggered a succession of attempts by Congress to force the administration to abide by the law. Several amendments and committee report language were passed that indicated the Congress's commitment to enforcement of the forced labor statute. Additional hearings have been held and various members of the Congress have continued to write letters requesting immediate enforcement of the ban. Few issues can claim such broad bipartisan support, but all to no avail.

One would naturally assume from the repeated refusals that there must be some good reason to neglect our own laws and allow Soviet products made by forced labor to enter U.S. markets. Unfortunately, that is simply not the case. No government official has denied that the Soviet Union makes extensive use of forced labor. Indeed, the evidence to the contrary is overwhelming. Neither has any official denied that the Soviets export products made with forced labor to foreign countries. The Orlovs and the Bukovskys of the world who experienced the camps firsthand confirm that goods produced by forced labor are made for export.

What then is the reason for neglecting our own laws? My belief is that Treasury's often repeated statement that it lacks information on forced labor-made products is a non-issue. As I stated earlier, the regulation which has been on the books for years says clearly that the Commissioner of Customs does not require absolute proof or conclusive evidence but only, in effect, probable cause — reason to believe — that merchandise coming into this country is produced under proscribed circumstances. We have that information today. And as others like Yuri Orlov come to the West and tell their stories, the amount of evidence will increase.

I contend that forced labor-made goods have not been banned because some officials believe that if we were to enforce the law, the Soviets would retaliate. Over the past four years, it has become increasingly clear that other policy considerations have come to outrank the enforcement of our own laws. Congress has been told repeatedly to wait — wait for a more auspicious time in East-West relations, wait until some new set of talks is completed, wait to see how the Soviets respond to some other action — and maybe then enforcement will be considered. Some officials fear the Soviets will refuse to buy U.S. farm goods if Soviet forced labor goods are banned. Perhaps. But the plain fact is the Soviets have already effectively reneged on the grain agreement according to the Department of Commerce. After four years of repeated excuses, I have serious doubts about the likelihood of any action anytime soon.

There is no reason for another month or even a day to pass before the law is enforced. In a nation of laws, no Customs official and no Treasury official and no White House official is above our laws. If the administration believes the law is wrong or unenforceable, then it should be repealed or amended. But it should no longer be ignored. To fail to enforce our own law makes a mockery of our legal process. And if there is one thing that is calculated to earn the ridicule of the Soviet Union, it is the United States failing to live up to its own principles and ideals.

While I do not want to overestimate the importance of this matter, I am not prepared to underestimate it either. This is an important national and international issue. It is, in my opinion, one of the most significant human rights issues in the world today — not because of the dollar volume of the trade involved, which is miniscule, but because of the significance of the principle involved.

Solzhenitsyn's *Gulag Archipelago* said that the forced labor camps "were invented for destruction." With what we know today about the camps, about the shortage of labor in the Soviet Union, and about the increasing number of arrests on trumped-up charges, there is little doubt that our continuing reluctance to enforce the law only adds to the burden of the Soviet people.

Banning Soviet forced labor-made goods can have a positive effect. Vladimir Bukovsky in addressing the consequences of a possible U.S. embargo on such Soviet imports into this country said,

I believe such action will lead to a decrease in the use of forced labor. I also believe that such action might force the Soviet authorities to consider broader economic changes and reforms in labor laws. This would be definitely a step in the right direction, and an important message from America to Russian people — a message of concern about the latter's well-being and freedom.

Bukovsky went on to tell the Senate Finance Committee about the plight of one Soviet prisoner. In 1979, the Soviets shipped timber to West Germany. Hidden amid the timber was a note from a prisoner known only as Akhmetov who was serving his term in Krasnoyarsk District. In the note, Akhmetov described the conditions under which prisoners were working and appealed to the West to help them. It was apparent that the prisoner had knowledge that the timber would be received in the West.

Will we continue to ignore such pleas for help, or will we take the modest steps necessary to ban the goods? The correct path is clear. We have the ability to further human rights by enforcing our own laws. We should act now.